vantages that have made them so popular. In spite of the suspicion which these novel features must needs create in the mind of the common-law lawyer, the event is showing that judicial tribunals of this type can and do administer justice in accord with the substantive law and to the general satisfaction of litigants, and that the elimination of involved and detailed procedure is not in any way incompatible with the general security. Experience of these new judicial tribunals may well assure the bar upon this point and pave the way for like developments in the higher courts. Otherwise, rise of administrative tribunals and shifting of the administration of justice thereto may leave the common-law courts no more than the shadow of their old-time jurisdiction.

Lawyers will also be interested in the discussion of the Public Defender and the author's conclusion, which appears well warranted, that "as the probation branch is indispensable to every criminal court, the sounder line of development would seem to be to entrust this service to the probation officers rather than to duplicate the work and create new officials" (p. 127). As in so many other cases, we have sought to remedy ill effects of the want of modern organization by multiplying officers rather than by going to the root of the difficulty.

Finally, attention should be called to the chapter on Legal Aid and the Bar (pp. 226–239), which contains much that lawyers should take to heart.

In making Mr. Smith's investigations possible and publishing the results of his work the Carnegie Foundation has done a conspicuous service to the law.

ROSCOE POUND.

PRINCIPLES OF THE LAW OF CONTRACTS. By Sir William R. Anson. Fourteenth English edition, third American edition, with American notes by Arthur L. Corbin. New York: Oxford University Press. 1919. pp. v–568.

To the frequently repeated assertion that Anson on Contracts is the best book on the subject, I have for many years replied, "Possibly, but what a distressingly humiliating confession." We are now up to the third American edition. It is based either upon the fourteenth English edition, according to the title-page, or upon the twelfth, according to the preface. Immaterial. Plenty learning there is. Plenty industry. Plenty phraseologies which ought long ago to have been discarded. Some useful analysis. Little attempt at synthesis. No effort at the eradication of time-dishonored grotesqueries. The whimsies of the "authorities" (Authorities always impede progress) once more treated with uncritical adoration.

Quasi-contracts. — Certain heterogeneous classes of cases, which have in common conspicuously this, that they are *not* contracts, are huddled together, put into a class, and called *quasi*-contracts — by translation, *as-if*-contracts (sections 8, 271–273, 402, 475). The book tells us that the term is "convenient" (sec. 5). I call it stupid, or, at best, slipshod. Why we should group "a multifarious class of legal relations" (in none of which agreement is ever a constituent factor) under the word "contract" (from which agreement is never absent), or under the meaningless phrase "as-if contracts," is something beyond my comprehension. Do not refer me to bygone days when none of the terms was understood. I am speaking of the third American, based upon the twelfth or fourteenth English, edition of Anson on Contracts. Are ancient crudities entitled to greater respect than modern? Is not the ashpit the proper place for old and young alike?

Unilateral Contracts. — Another kind of contracts which do not exist (I plead the book) is unilateral contracts (sec. 24). A unilateral contract is as unthinkable as a unilateral elephant, or anything else which necessarily has two sides. Nobody would call a monologue a unilateral conversation, or a soprano solo a unilateral duet, or a lecture a unilateral debate. Then why call a promise a unilateral contract? The two things, promise and contract, have this in common, that in both the presence of two parties is necessary; but in a promise there is but one actor, while in contract there are always two actors. In other words, a promise is always unilateral, and a contract is always bilateral at least. The book tells us that in simple contracts there is an "act for a promise," a "promise for an act," or a "promise for a promise" — always two actors. How then can there be a unilateral contract?

One way, we are told, is by a "contract under seal," when one party makes a promise without receiving any consideration for it (sec. 23). But that is to call a promise a unilateral contract — which would be as sensible as calling a lonely run a unilateral foot race, or a single baby unilateral twins.

Another sort of unilateral contract, the book tells us, is a promissory note (sec. 24, note). But a promissory note is a promise, and is not in the least like a contract. Observe this: In consideration of the transfer of a horse, A agrees to hand to B, within three days, a promissory note for $200 endorsed by, etc. That is a contract. There are two actors. The promissory note, when given, is not another contract; it is a promise. When the book indicates that a contract may consist of a "promise for a promise," one would not expect that a promise would itself be said to be a contract, whether unilateral or other. If I were to call two reciprocal promises a bilateral promise, instead of a contract, you would tell me that I was making a mess of my vocables. Ought I to be less frank when you call a single promise a unilateral contract, instead of what it is?

Agency from Necessity. — In section 444 the book tells us: "Circumstances operating upon the conduct of the parties may create in certain cases agency *from necessity*. . . . A husband is bound to maintain his wife: if therefore he wrongfully leave her without means of subsistence she becomes 'an agent of necessity to supply her wants upon his credit.' . . . In all these cases the legal relations between principal and agent do not arise from agreement; they are imposed by law on the parties without their consent in order to promote general welfare."

I presume that the "necessity" is that of ascertaining some legal basis upon which to found liability: No man can be made liable for what neither he nor his agent orders; the deserted wife was not an agent; therefore — What? — therefore the fact must be changed, and the wife must have been an agent. Can anything be more absurd? Why did not the writers question the validity of the major premise? Do not tell me that one hundred and seven years ago a judge spoke of "an agent of necessity." I know that. But the judge is dead, and the evil which he did ought to have been buried with his bones.

Why did the writers overlook such a glorious opportunity for the introduction of the "quasi" idea? Why not say that the wife was an "as-if" agent? That looks like burlesque; but *quasi-agent* is quite as respectable a conception as *quasi-contract*. Or why did not the writers declare that the wife was a "unilateral" agent? That would be, no doubt, to posit an agent without a principal. But unilateral bilateralia must always be somewhat anomalous (Pistol practice as a unilateral duel is a good example). And the conception is not a whit more objectionable than that of a unilateral contract. That two people can draw together (*con* together, + *trahere*, draw = contract) by one of them drawing by himself, is a notion that even Lord Dundreary's poor wit would have rejected. For, commenting on "Birds of a feather flock together," he said: "Of course they do. One of them could not go into a corner and flock

all alone." Might we say that the one in the corner was doing a unilateral flock?

Plainly the trouble lies in uncritical acceptance of the major premise above referred to. It is not true that a man cannot become liable except by action of hfmself or his agent. When, for example, by statute I am made liable to pay certain municipal taxes, and when the taxes are declared to be a lien upon my property, accompanied by a power of sale in case I fail to pay, nobody has ever based liability of me and my property upon a fictitious agency "from necessity" (What a mess!) of the municipality. It has been deemed sufficient to say that the law had declared that, without any act of mine or on my behalf, either by a voluntary or an imposed agent, I am liable to pay. Why, then, might not we say that under certain other circumstances I may be made liable for groceries purchased *without* my authority? That in the former case the law was embodied in a statute is, of course, immaterial. Our judge-made law has the same compelling force; and it, too, may some day go into a statutory code.

Agency by estoppel. — In 1900, in my book on Estoppel, I distinguished among the cases in which an unauthorized act bound the person on whose behalf it was done, as follows:

1. If an agent acts within what appears to be his authority, the principal is bound.

2. If an agent appears to be acting within his authority, the principal is bound (p. 501).

Some years ago the distinction was carried (without acknowledgment of source) into Halsbury's Laws of England. Anson and his editor are aware of the first of the propositions, but do not appear to have heard of the second. And yet, without it, scientific distribution of the cases cannot be made.

Again, in section 453 the book tells us: "It should be observed — indeed it follows from what has been said — that X cannot by private communications with A, limit the power which he has allowed A to assume." This is followed, as illustration, by a case in which it is said that "Jones, however, forbade Russell to draw and accept bills." Jones could not do it, but actually did it. What the writers meant to say was that although Jones could, and did, limit Russell's authority, yet he (Jones) was liable.

Ratification. — The book entirely ignores the fundamental difficulty about ratification (sec. 445). The usual "rules" are sufficiently stated, but the writers appear to be unaware of the objection to the whole doctrine. If A agrees to sell, and X, on behalf but without the authority of Y, agrees to purchase a horse for $200, no contract has been created. A is not bound to sell, and Y is not bound to purchase. Nevertheless the book speaks of such a futility as "*a contract* made without authority" — which, like unilateral contracts, is a mere contradiction in terms. Commence with that, and you easily slip still farther — into such language as this, for example: "a contract of insurance made by an agent without his principal's authority" (p. 514); whereas, under such circumstances there is no agent, and no principal, and no contract.

The question which the book fails to notice is: If when the document above suggested was signed it was nothing at all (except a misrepresentation by X), how can it become a contract by the act of somebody who was not a party to it? If we call it a *contract* made by an *unauthorized agent*, we may drift into ratification. But if it was nothing, can Y treat it as an option in his favor, which he may exercise or not as he pleases? A did not intend to give an option. The doctrine of ratification declares that that is precisely what he did.

Burden of Proof. — In discussing the burden of proof (sec. 369), why is Professor Thayer's illuminating distinction between the burden of proof and the burden of going forward ignored?

Waiver. — Nowhere in the book is there a wider departure from sanity than in the sections relating to waiver (secs. 151, 365, 366, 412–414, 430). Criticism

here subsides into silent, suffering condemnation. The writers have seen my book on "Waiver distributed among the departments Election, Estoppel, Contract, and Release," but it has not been of the slightest service to either of them.

And so, to the frequently repeated assertion that Anson on Contracts is the best book on the subject, I am still constrained to say, "Possibly, but what a distressingly humiliating confession!"

JOHN S. EWART.

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CELEBRATION LEGAL ESSAYS. By Various Authors. To Mark the Twenty-fifth Year of Service of John H. Wigmore as Professor of Law in Northwestern University. Chicago: Northwestern University Press. 1919. pp. 602.

This collection of articles, first fittingly published in the *Illinois Law Review*, is now issued in a single volume, with a useful index. While *Festschriften* have not been common in this country — that presented by his colleagues to Professor Langdell being among the first — this occasion is well justified by Professor Wigmore's distinguished career.

His first professional appointment, in a Japanese university, naturally turned Wigmore's attention to the general principles, rather than the details, of the common law; and immediately upon his return to this country and his appointment to the Northwestern University he began to give us the results of his speculative thought. His legal masters were, like those of most of us in that day, Thayer and Ames; and it is significant that Wigmore's most fruitful work has been in their fields, Evidence and Torts. From Ames he acquired the power of legal generalization which he has so nobly used in his analysis of the law of Torts; from Thayer the historic method and the point of view which he has worked out in his monumental book on Evidence. But while he has individually and originally developed these suggestions of his masters, Wigmore's great achievement as a legal scholar, his chief claim to fame, above his marked originality of analysis and his incisive individuality in construction, is his patient, energetic massing of his materials, his thorough and lawyerlike presentation and consideration of his evidence, his open-minded dealing with theories and arguments. His "Evidence" is the last word on the subject, because it covers everything that can profitably be said about it; his remarkable collection of materials for the study of Torts gets its chief value from the fact that one need not step outside its covers to find what material one requires. A classmate delights to lay at Wigmore's feet this slight word of appreciation for the individuality, the originality, and the scholarship of his friend.

Are the articles worthy of their occasion? That could hardly be expected of all of them. *Inter arma leges* at least *minime dicunt.* Out of thirty-three articles it is a pleasure to find at least eight of adequate quality. If one were to be selected for special commendation, the reviewer would name the remarkable study on Liberty of Testation by Professor McMurray. The other twenty-five are for the most part slight, but none profitless. As a collection it is worthy of serious study.

JOSEPH H. BEALE.

THE GROTIUS SOCIETY: PROBLEMS OF THE WAR. Volume II. London: Sweet and Maxwell. 1917. pp. xxv, 178.

This is a collection of the papers read before the Grotius Society in 1916. The rules of that body say that "it shall be a British Society." As many of the opinions on international law expressed in the present war by citizens of belli-